# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

AMERICAN CHURCH, INC.

and

Case No. 8-CA-35126

GRAPHIC COMMUNICATIONS, UNION LOCAL 638-S A/W GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, AFL-CIO, CLC

Allen Binstock, Esq.,
for the General Counsel.
Gary D. Johnson and Richard H. Blaich, Esqs.,
Beckman Lawson LLP,
of Fort Wayne, Indiana, for the Respondent.
Peter J. Leff, Esq.,
O'Donnell, Schwartz & Anderson, P.C.,
of Washington, D.C., for the Charging Party.

#### **DECISION**

## Statement of the Case

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried on December, 8 and 9, 2004 in Cleveland, Ohio, upon a complaint, dated, September, 28, 2003, alleging that the Respondent, American Church, Inc., violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The underlying unfair labor practice charges were filed by the Graphic Communications Union Local 638-S (the Union) on June 25, 2004. According to the complaint, the Respondent unlawfully withdrew its recognition of the Union as the bargaining representative of a unit of employees, unilaterally modified certain terms of the bargaining agreement and made unilateral changes in the policies affecting the conditions of employment of its employees, and unlawfully failed to give adequate notice to the Union to afford it the opportunity to bargain over the changes in the employees' working conditions.

The Respondent filed an answer in which the jurisdictional allegations, as well as supervisory status of certain employees, are admitted. The answer also admitted the factual allegations underlying the complaint, that on about May 20, 2004, the Respondent withdrew its recognition of the Union as the collective-bargaining representative of a unit of employees, that on about the same date, it modified the alleged items in the bargaining agreement without the consent of the Union, that the modified terms and conditions of employment are mandatory

subjects of bargaining, that on about the same date, it made unilateral changes in the alleged policies affecting unit employees, and that the policies are considered mandatory subjects of bargaining. The Respondent stated in its answer, that it consolidated its operations and employees into a single location at Southern Boulevard, that it withdrew recognition from the bargaining representative of the employees at its Southern Boulevard facility and admitted that it terminated the collective-bargaining agreement on or about May 20, 2004.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent, I make the following

# Findings of Fact

#### I. Jurisdiction

The Respondent, American Church, Inc., is an Indiana corporation located in Youngstown, Ohio, where it is engaged in the manufacture and printing of church offering envelopes. With sales and shipments of goods valued in excess of \$50,000 from its Youngstown, Ohio facility directly to points outside the State of Ohio, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union, Graphic Communications Union Local 638-S, is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

#### A. Issues

The case presents these issues: First, whether the Respondent unlawfully withdrew its recognition of the Union, second, whether the Respondent unlawfully modified provisions of the bargaining agreement and unilaterally changed the employees' working conditions, and, in the alternative, whether the Respondent unlawfully failed and refused to notify the Union, and refused to provide it with an opportunity to bargain over, the effects on the unit employees of withdrawing recognition and of terminating its bargaining agreement.

## B. Background

American Church, Inc., the Respondent, manufactures and prints church envelopes in Youngstown, Ohio. The present Company acquired the assets of its bankrupt predecessor, American Paper Group, on January 15, 2003. The business has its origin in 1915, with two companies, one known as American Paper Products which manufactured church envelopes and a second company known as Postal Church Service which printed church offering envelopes. The two entities, successively owned and operated by six companies, maintained their distinct identities and their separate operations, even after they moved into a single location at 6401 Southern Boulevard sometime in 1958 or 1959 and remained there until 1998. The distinction between the entities, the manufacturing operation and the printing operation, was maintained by a fence and a locked gate to keep the respective employees apart. In 1998, the printing operation

5

10

25

30

was moved from the Southern Boulevard location to a new location, known as the McClurg Road facility.

Since 1956, the Union has represented only those employees who worked in the manufacturing facility, as distinguished from the employees engaged in the printing operation who were never represented by a union. American Paper Group which owned and operated the unionized business at Southern Boulevard and the nonunionized facility at McClurg Road declared bankruptcy on November 5, 2002. On January 15, 2003, the Respondent which was then known as Our Sunday Visitor, formed a company called APG Acquisition Corporation d/b/a/ American Envelope, Inc., to acquire the assets of the bankrupt American Paper Group. Following the acquisition, the Respondent, still under the name, APG Acquisitions Corporation, did not assume the existing bargaining agreement, the Respondent severed the employment relationship with the employees and required them to re-apply for employment. Thereafter, the Respondent recognized the bargaining unit and its Union and negotiated a new bargaining agreement, effective February 1, 2003 through February 16, 2006 (GC Exh. 2). The Union represents the employees in the following unit (GC Exh. 2, p.1):

All production and maintenance employees, including porters and janitors, but excluding office, clerical and professional employees, guards, and all supervisors as defined in the National Labor Relations Act.

On May 1, 2003, the Respondent sold a major component of its Southern Boulevard operation, namely the commercial envelope manufacturing equipment (R. Exh. 2). As a result, 50 to 60 union employees were laid off. The Respondent continued to operate the two separate businesses, with the unionized workforce located at Southern Boulevard and with the nonunionized employees at the McClurg Road facility.

In January 2004, the Company announced its name change from American Envelope, Incorporated to American Church, Incorporated (R. Exh. 4). In the meantime, the Respondent contemplated to move the two businesses into one location. The decision was announced to the employees on April 2, 2004, that the contingent at the McClurg Road location would be relocated to the Southern Boulevard location. The informational meeting covered many employment related subjects, such as pay, vacations, hours of work, and the Company's goals (GC Exh. 4). One thing was clearly stated, that the changes in the working conditions were not applicable to the bargaining unit employees. For example, the Company's outline of the presentation to the employees showed that the announced annual pay increases were intended for nonunion employees only (GC Exh. 4). Tom Harris, director of human resources, testified that the Respondent continued to honor the bargaining agreement for the unit employees in spite of the relocation of the nonunionized employees. By May 18 or 19, 2004, the move to the Southern Boulevard. location was completed.

On May 20, 2004, the Respondent suddenly informed the Union in writing that it was withdrawing recognition. According to Kimberly Telford, president of Local Union #638, Ron Plummer, plant manager, asked her to attend a meeting with Kyle Hamilton, president and Tom Harris, manager of human resources. She was handed a letter which states (GC Exh. 3):

On Tuesday of this week, American Church, Inc. commenced the consolidation of the operations and employees from its 365 McClurg Road

45

5

10

15

20

25

30

35

facility into the 8401 Southern Boulevard facility. These consolidation efforts are ongoing.

As you are aware, the production and maintenance employees previously working at the 365 McClurg Road facility are nonunion. The combination of the nonunion and unionized employees has resulted in the Union's loss of majority status at the 8401 Southern Boulevard facility. As a result, the Company is hereby withdrawing recognition of the Union as representative for the combined production and maintenance employees of the Company.

10

15

5

The Company's sudden action affected approximately 28 unit employees. By letter of May 25, 2004, Telford responded, stating that the bargaining agreement continues to be in effect covering all production and maintenance employees, that any changes to the terms of the contract will be grieved and that the employer is requested to identify any new employees assigned to perform bargaining work (GC Exh. 5). The Company's response of June 2, 2004, insisted that withdrawal was appropriate, "that there is no evidence that the union continues to represent a majority of the production and maintenance employees," and that without such evidence the Company cannot adhere to the contract (GC Exh. 6).

20

The General Counsel argues that the Respondent unlawfully withdrew recognition from the Union and unlawfully modified provisions of the collective-bargaining agreement. In the alternative, argues the General Counsel, the Respondent failed to provide the Union with adequate notice and an opportunity to bargain over the effects of the relocation and the withdrawal of recognition. The Charging Party supports the General Counsel and submits that the Respondent lacked actual proof of loss of majority support among the employees.

25

The Respondent argues that the McClurg Road employees became part of the bargaining unit by terms of the bargaining agreement, creating a community of interest with the Southern Boulevard employees. Because the number of the transferred employees exceeded the number of the Southern Boulevard employees, an accretion to represent status is inappropriate. Without an accretion argument, so argues the Respondent, the Union no longer has majority status.

30

# C. Analysis

35

40

The proposition here is that an employer with two separate operations, one unionized with about 28 employees, and the other nonunion with about 60 employees, relocated the latter operation to the location of the former, and thereafter disfranchised one group of employees with the justification that the other group was larger in numbers. To examine the legality of this action requires a thorough analysis. Initially, as effectively demonstrated by the General Counsel and the Union, the two operations have historically been separate and distinct groups of employees, and they remained distinct and separate after the relocation, in spite of a superficial attempt by the Respondent to prove a community of interest. Secondly, even if a form of integration could be shown, the question then is whether the unionized contingent was accreted into a larger unit. According to the Respondent, accretion is inappropriate, because "the number of McClurg employees exceeded the number of Southern employees." If accretion is not applicable, the Respondent cannot justify its action under Board law, unless it can be shown that the Union actually lost majority status. Finally, the Employer unilaterally changed provisions in the collective-bargaining agreement and other terms and conditions of employment and justified

making changes in the terms of the collective-bargaining agreement without its general obligation to notify the Union and afford it an opportunity to bargain over the effects of its actions.

## Consolidation Did Not Change the Historic Bargaining Unit

The factual circumstances here are analogous to those in *Comar, Inc.*, 330 NLRB 1157 (2000), and *Northland Hub, Inc.*, 304 NLRB 665 (1991). There, as here, two groups of employees were combined. In *Comar*, a group of employees who were represented by a union were moved to a facility where the employees were unrepresented. The Board found that the withdrawal of recognition was unjustified, where the relocation did not result in a full integration of operations. The employees remained physically separated and continued to perform the same work on the same machines. Even though they had common supervision, they were not sufficiently integrated to become a new unit. In *Northland Hub*, the relocation of a group of employees represented by one union to a facility represented by another union did not result in an accretion where the employees were not integrated.

The Respondent sudden and abrupt actions in this case are similarly unjustified. The record here clearly supports a finding that the Southern Boulevard employees, historically regarded as performing the manufacturing functions, were and remained separate and distinct from the McClurg Road employees, who have always been regarded as the printing operation. The Southern employees have a bargaining history with the Union since 1956, while the McClurg employees were never represented. Their separate identities have endured over the years irrespective of whether both operations were housed in a single location or in separate facilities. In substance, the history of the business, the physical separation of the employees, their functional differences, and the lack of a community of interest among them, all justify the continued distinction between the two groups.

As stated above, until about 7 years ago, the two businesses were located together at the Southern Boulevard building. The employees were separated by a fence. The unionized employees were engaged in the manufacturing or converting operation which consisted of making envelopes. The process involved large rolls of paper which were converted by large machines into envelopes, by cutting the paper, folding it, and gluing the envelopes. The finished product was then packed for shipping. The envelopes were either shipped directly to customers or sent to the printing operation for processing.

The printing process was and remained a separate business whose function consisted of adding custom printing to the finished product. The printing machines are smaller in comparison to the large manufacturing machines. The printing operation was located in a distinctly separated part of the Southern Boulevard building and separated by a fence (GC Exh. 7). When the printing business was moved into the McClurg Road building, approximately 7 years ago, it obviously continued its separate identity as a nonunion operation. When the Respondent sold the commercial portion of the manufacturing business, located at the Southern Boulevard location, it generated sufficient space to relocate the printing business back to the Southern Boulevard building, where it had been years ago.

After the relocation, the Respondent maintained the inherent separateness of the two operations. The manufacturing business remained in its portion of the facility and the printing

5

5

10

15

20

25

30

35

40

business was separately located in the same plant. Unlike before, they were not separated by a fence. The record shows in great detail the relative locations of the two businesses (GC Exh. 8). The Respondent made no attempt to intermingle or integrate the employees. The employees continued to work on their respective work stations and their assigned machines. Unit employees continued to perform their duties and nonunion employees worked on their respective assignments. They did not train each other or substituted for one another.

Daniel Smith, general manager, reinforced that notion at the April 2, 2004 employee meeting, when he emphasized that the operator functions stay with the machine, that is the employees would continue to work on their assigned machines after the move was completed (GC Exh. 4). Kimberly Telford, employed by American Church for 20 years and the current union president, credibly testified that in terms of integrating the two groups, nothing was discussed beyond common work hours. Her testimony also established that none of the McClurg employees performed any bargaining unit work prior to May 20, 2004. In short, the record shows that there was no work-related interaction among the two groups of employees. The Respondent does not contest the existence of a historic distinction between the two groups of employees. This scenario existed historically and did not change after the relocation of the McClurg contingent.

That the Respondent also intended to continue the separate identities of the two groups was clear from the remarks made by Smith at the employee meeting, and substantiated by the accommodations of the employee contingents in separate parts of the building.

Tom Harris, manager of human resources, was more specific at the April 2, 2004 meeting when he discussed changes in employment policies regarding annual pay increases, vacations, attendance, overtime, shift differential pay, and discipline. When asked whether these policies applied to unit employees, he clearly stated, no, that the policies for unit employees were governed by a bargaining contract. The single reference, Workforce Integration, on the agenda at the meeting, emphasized only three points, first, operator functions stay with machine, second, no fences, and three, common work hours (GC Exh. 4). It reemphasized that the only commonality between the groups consisted of common work hours, namely those which had existed for unit employees.

Mindful that there were some shared aspects of employment among all the employees, I also realize that these forms of commonality were in existence prior to the relocation. For example, both groups had common supervision. According to Respondent's testimony, the management team in place on April 1, 2004, and shown in an organizational chart, had not changed except for the promotion of Dan Smith to the position of general manager (R. Exh. 7). Dennis Broadwater, Alice Melek and Donald Kerens operated as production supervisors on different shifts at both operations. Jeff Nimms, a unit employee who as a floater adjuster had worked in all departments, was promoted to maintenance supervisor in February 2004, and served as maintenance supervisor at both locations prior to the move, as well as thereafter. He assumed a major role in the relocation process and worked with union and nonunion employees to accomplish the move.

Moreover, each operation had its own shipping and receiving employee, Tom Grecko, a unit employee for the Southern business and Lori Beckett for the McClurg group. Yet the record

shows that 80 percent of the work was done at the Southern location, because Beckett performed other duties as well. This allocation of work did not change after the relocation.

The Respondent employed one electrician, Florin Dimitrui, a unit employee. He was assigned to do all electrical work at both locations. His job function also did not change after the move into the Southern building. However, both operations had their respective mechanics, who performed the repairs on machines at their separate locations. After the relocation the separate functions of the mechanics did not change.

The other employee whose function crossed the dividing line was that of baler. Two employees, who were members of the bargaining unit, baled paper scrap generated by the machines at both locations. Most of the paper scrap ended up at the Southern Boulevard location. Again, the respective functions of these employees did not change following the relocation.

All along, the Respondent had accepted the distinction between the two groups of employees, as demonstrated by the employee chart, dated April 1, 2004 (GC Exh. 9). According to the chart, the employees have not been intermingled, but they continued to be listed separately (GC Exh. 9). In sum, only three changes occurred as a result of what is referred to as consolidation, first the McClurg employees now worked at the Southern building, second, they were no longer separated by a fence, and three, their work hours were changed to those long established for the unit employees.

Significantly, the Respondent recognized and bargained with the Union and executed the collective-bargaining agreement on February 1, 2003. The Respondent adhered to the terms of the bargaining agreement. At the employee meeting on April 2, 2004, where the Respondent announced the relocation of the McClurg Road facility, management assured the employees that the working conditions for the unit employees continued to be governed by the collectivebargaining contract. While it is true that the Respondent made no secret of its intentions to move both operations into a single location and kept the employees informed of the developments in that regard, the employees were never apprised of any intention by the Respondent to fully integrate its workforce. To the contrary, the employees were assured repeatedly that the union employees would continue to remain union. At an employee meeting in 2003, Robert Papes, plant superintendent responded to a question directed by an employee, and said that the union employees would remain so and the nonunion employees would remain nonunion. The same message was repeated by Human Resource Manager Harris on April 2, 2004. With such assurances and with so few changes to the operations, it was reasonable that the Union did not make a request to bargain at any time prior to the Respondent's abrupt attempt to disenfranchise the unit employees.

In sum, the history of the bargaining unit, its physical separation in the Southern Boulevard building, the functional difference between the two groups, as well as the absence of any integration in the working conditions of the employees, convinces me that bargaining unit was intact and essentially unchanged. Finding that the bargaining unit, as defined in the bargaining agreement, was and continued to be a viable unit after the relocation of the McClurg Road employees, and that the unit was not intermingled with the relocated employees, the Respondent was unjustified to withdraw recognition of the Union.

7

5

10

15

20

25

30

## The Relocated Employees Did Not Accrete to the Bargaining Unit

The Respondent argues that the definition of the bargaining unit includes the relocated employees, stating that the "collective bargaining agreement's classification language supports the McClurg employees' inclusion." However, that argument would initially suggest that the employees would therefore have augmented the Union's representative status and that the relocated group would also be covered by the collective bargaining agreement. More specifically, the additional employees have accreted to the existing operation, so that the existing contract should be extended to cover the consolidated operation. But in a situation where a group of employees had long been excluded from a contractual bargaining unit and where the union did not have evidence of majority support among those employees, their inclusion into the unit will require an opportunity to vote. *Borden, Inc.*, 308 NLRB 113 (1992). Naturally, the Respondent sees it differently, suggesting that the unrepresented group of employees numerically overshadowed the existing unit, so that union representation of the entire group would be inappropriate. According to the Respondent, accretion to represent the additional employees is not supported by law.

In several cases dealing with the issues of accretion, the Board has established the following factors to be considered: The degree of interchange among employees, the geographic proximity, the integration of operations, the integration of machinery and product lines, centralized administrative control, similarity of working conditions, skills, and functions, common control over labor relations, collective bargaining history, and the number of employees at the facility proposed for accretion as compared with the existing operation. Meijer, Inc. v. NLRB, 564 F.2d 737 (6th Cir. 1977), Dura Corp., 153 NLRB 592, enf., 375 F.2d 707 (6th Circ. 1967), Safeway Stores, 256 NLRB 918 (1981). As already stated, here, there was little if any interchange among the employees, the two operations were no longer separated by a fence in the same building or separated different buildings, but they were still working apart from each other. There was no integration of operating skills, the employees remained with their previously assigned machinery and did not work on the machines of the other group. The unit employees had a long and separate collective bargaining history. Although the employees shared a common administration and, occasioned by the relocation, certain other commonalities, their historic distinction remained. Considering the continuing separate identities of Respondent's employees, and without any real community of interest among the two groups of employees and a continuation of a viable and unchanged bargaining unit, a finding of accretion is not supported by the record.

The Respondent agrees with the conclusion, but for different reasons, claiming complete integration and consolidation among the employees, such as their common uses of the cafeteria, the smoking area, the parking lot, and the restrooms. Yet the record also shows that the unit employees and the nonunion employees were scheduled to take their lunchbreaks and their work breaks at different times. Common use of the loading dock and the warehouse facility reflects the Respondent's efficient use of space, but does not prove the integration of the work force. Moreover, the Respondent's common policies dealing with workplace violence and sexual harassment, and rules governing safety or smoking for all employees are only remotely relevant when compared to policies affecting traditional conditions of employment, such as pay, vacation, benefits, attendance, discipline, overtime, and layoff. The isolated instances of a few employees, the material handler, the baler, and the electricians, working in both operations, does not contradict the credible testimony that none of the relocated employees performed bargaining unit

5

10

15

20

25

30

35

40

work prior to May 20, 2004. In sum, the Respondent's claim of full and complete integration among the two operations is exaggerated and not supported by the record. The Respondent's reliance upon *Abbott –Northwestern Hospital*, 274 NLRB 1063 (1985) and *Kelly Business Furniture*, 288 NLRB 474 (1988), is therefore misplaced. In the former case, the employer transferred 63 nonunion psychiatric assistants to a unit of 9 psychiatric assistants all of whom performed the same tasks. The employer's withdrawal of recognition was held lawful. In *Kelly Business Furniture*, the two groups of employees were found to be integrated as a result of functional interaction and interchange of work.

## The Respondent Had No Proof of the Union's Loss of Majority Status

Even if the McClurg Road employees were found to be integrated with the unit employees as a consequence of the consolidation process, and were found to be accreted to the unionized employees, the Respondent would have violated the Act under recent Board law. In Levitz Furniture Co. 330 NLRB 717 (2001), the Board held that an employer violates the Act by withdrawing recognition of the union unless it had actual proof of "the union's actual loss of majority status." Good faith doubt is no longer sufficient under the new standard. The Respondent had no proof of the Union's loss of support among the employees beyond the assumption that all of the unrepresented employees were opposed to the Union. Indeed, the Respondent states in its brief (R. br., p. 41): "Until the move was complete, it had no way of knowing whether the Union would have minority status, or majority status." One day later, the Company abruptly withdrew recognition. At that time the Respondent still did not know with certainty what the union sentiment was among the employees. Had the McClurg Road employees been given the opportunity to vote in a Board conducted election, a majority of the relocated employees might have supported the Union. New hires are presumed to support a union in the same proportion as the employees they replaced. The Respondent merely presumed to guess on behalf of the unrepresented employees. The Board stated that the employer must prove by a preponderance of the evidence that the Union had in fact lost majority support, if the Union contests the withdrawal of recognition. The Respondent acted at its peril when it failed to rebut the presumption of majority status. Accordingly, the Respondent violated Section 8(a)(5) of the Act.

# The Respondent Unilaterally Changed Company Policy and the Bargaining Agreement

Finally, the Respondent admitted the allegations in the complaint that on May 20, 2004, it modified several provisions in the collective-bargaining agreement. The Respondent unilaterally changed the provisions in the contract dealing with medical insurance premiums, number of vacation days and vacation accrual, paid holidays, layoff policy, and pension plan. In addition, the Respondent unilaterally changed company policy providing for life insurance premiums, disability insurance, absenteeism policy, and disciplinary policy. For example, the Respondent doubled health insurance premiums for unit employees as of May 20, 2004. Employees were no longer able to accrue vacations on an annual basis, and they accrued less than the contractual 5 weeks vacations per year. The Respondent eliminated seniority as a factor in determining layoffs, and also eliminated the employees' pension plan.

The Respondent admitted to making policy changes, such as requiring employees' contributions to their life insurance and disability insurance. Additional unilateral changes

9

45

5

10

15

20

25

affected disciplinary policies, as well as rules governing absenteeism. The changes were generally perceived as being stricter and harsher.

It is axiomatic that an employer violates Section 8(a)(1) and (5) by unilaterally effectuating changes in the provisions of a collective-bargaining agreement. Unilateral changes by an employer during the existence of a collective-bargaining relationship concerning mandatory subjects of bargaining are considered per se refusals to bargain in violation of the Act. *NLRB v. Katz*, 369 U.S. 736 (1962). Here, the Respondent has admitted that its policy changes, as well as its changes in the contractual provisions of the collective-bargaining agreement are considered mandatory subjects of bargaining. The Respondent's actions in this regard were not justified. As found above, the Company's relocation of its employees to the Southern Boulevard location did not end the bargaining relationship. The Respondent abrogated its contractual obligations and failed to give notice to the Union about the changes in the conditions of employment and failed to provide the Union with an opportunity to bargain about the intended changes. I accordingly find that the Respondent violated Section 8(a)(1) and (5) of the Act.

#### Conclusions of Law

- 1. The Respondent, American Church, Inc., is an employer within the meaning of Section (2), (6), and (7) of the Act.
  - 2. The Union, Graphic Communications Union, Local 638-S, a/w Graphic Communications International Union, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.
- 3. The following employees of the Respondent constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees [employed in the Employer's Southern Boulevard manufacturing operations], including porters and janitors, but excluding office, clerical and professional employees, guards and supervisors as defined in the National Labor Relations Act as amended.

- 4. At all times since 1956, the Union has been the exclusive bargaining representative of the unit and been so recognized by the Respondent, as reflected in the collective-bargaining agreement effective from February 1, 2003 to February 16, 2006.
- 5. By withdrawing its recognition of the Union, as the collective-bargaining representative of the unit, the Respondent violated Section 8(a)(1) and (5) of the Act.
- 6. By unilaterally modifying and changing provisions (considered mandatory subjects of bargaining relating to medical insurance, vacation accrual and vacation leave, paid holidays, layoff policy, and pension plan) in the collective-bargaining agreement, the Respondent violated Section 8(a)(1) and (5) of the Act.
- 7. By unilaterally changing the conditions of employment (considered mandatory subjects of bargaining relating to life insurance and disability insurance premiums, absentee policy, and disciplinary policy) affecting unit employees, without prior notice and without

5

10

15

20

25

30

affording the Union an opportunity to bargain, the Respondent violated Section 8(a)(1) and (5) of the Act.

8. The unfair labor practices committed by the Respondent are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## Remedy

Having found that the Respondent has engaged in unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent must be ordered to recognize the Union, and, on request, bargain in good faith with the Union as the exclusive bargaining representative of the employees in the Unit. The Respondent must cease and desist from its unilateral implementations, and be ordered to rescind the unilateral changes in the provisions of the bargaining agreement and abide by its terms. The Respondent must be ordered at the Union's request to rescind its unilateral changes in the policy changes affecting the conditions of employment of the unit employees and reinstate the conditions of employment and fully restore the status quo ante that existed at the time of its unlawful actions. If any unit employees were disciplined, laid off, or otherwise adversely affected as a result of the policy and contract modifications, they should be reinstated to their former jobs. In addition, the Respondent must be ordered to make whole the unit employees for any loss of pay or benefits suffered as a result of the Respondent's unlawful actions in accordance with the decision in *Ogle Protection Service*, 183 NLRB 683 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest computed as in New Horizons for the Retarded, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

#### **ORDER**

The Respondent, American Church, Inc., Youngstown, Ohio, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to recognize the Union and bargain in good faith with the Union as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Unilaterally changing or modifying the provisions in the bargaining agreement, including those relating to medical insurance, vacation accrual, amount of vacation leave, paid holidays, layoff policy, and pension plan.

5

10

15

20

25

30

<sup>&</sup>lt;sup>1</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- (c) Unilaterally changing the conditions of employment for unit employees, including those relating to premiums for life insurance and disability insurance, absentee policy, and disciplinary policy.
- (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section (7) of the Act.
  - 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Recognize the Union, and on request bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment:

All production and maintenance employees [employed in the Employer's Southern Boulevard manufacturing operations], including porters and janitors, but excluding office, clerical and professional employees, guards and supervisors as defined in the National Labor Relations Act as amended.

- (b) Rescind its unilateral modifications of the provisions in the bargaining agreement, including provisions relating to medical insurance, vacation accrual, vacation leave, paid holidays, layoff policy, and pension plan and reinstate the bargaining agreement.
  - (c) Rescind its unilateral policy changes in the conditions of employment, including those related to life and disability insurance premiums, absenteeism and disciplinary policies, and reinstate the terms and conditions of employment for unit employees as they existed prior the unlawful actions.
  - (d) Offer all unit employees laid off, disciplined, or otherwise adversely affected as a result of the May 20, 2004 policy changes and contract modifications, including those relating to layoff, absenteeism and disciplinary policies, immediate and full reinstatement to their former positions, or if they no longer exist, to substantially similar ones without prejudice to their seniority or other rights and privileges.
  - (e) Make whole the unit employees for any losses suffered as a result of the Respondent's unlawful conduct in accordance with the Remedy section.
  - (f) Within 14 days from the date of this Order, remove from its files any reference to the discipline issued pursuant to the May 20, 2004 policy and contract changes and within 3 days thereafter notify the employees in writing that this has been done and that the discipline will not be used against them in any way.
- (g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, time cards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

5

15

25

30

(h) Within 14 days after service by the Region, post at its Youngstown, Ohio facility, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 20, 2004.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., June 24, 2005.

Z5

Karl H. Buschmann
Administrative Law Judge

30

35

5

10

<sup>&</sup>lt;sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### **APPENDIX**

## NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities

WE WILL NOT refuse to recognize the Union and bargain in good faith with the Union as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT unilaterally change or modify the provisions in the bargaining agreement, including those relating to medical insurance, vacation accrual, amount of vacation leave, paid holidays, layoff policy, and pension plan.

WE WILL NOT unilaterally change the conditions of employment for unit employees, including those relating to premiums for life insurance and disability insurance, absentee policy and disciplinary policy.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section (7) of the Act.

WE WILL recognize the Union, and on request bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment:

All production and maintenance employees [employed in the Employer's Southern Boulevard manufacturing operations], including porters and janitors, but excluding office, clerical and professional employees, guards and supervisors as defined in the National Labor Relations Act as amended.

WE WILL rescind our unilateral modifications of the provisions in the bargaining agreement, including provisions relating to medical insurance, vacation accrual, vacation leave, paid holidays, layoff policy, and pension plan and reinstate the bargaining agreement.

WE WILL rescind our unilateral policy changes in the conditions of employment, including those related to life and disability insurance premiums, absenteeism, and disciplinary policies, and reinstate the terms and conditions of employment for unit employees as they existed prior the unlawful actions.

WE WILL offer all unit employees laid off, disciplined or otherwise adversely affected as a result of the May 20, 2004 policy changes and contract modifications, including those relating to layoff, absenteeism and disciplinary policies, immediate and full reinstatement to their former positions, or if they no longer exist, to substantially similar ones without prejudice to their seniority or other rights and privileges.

WE WILL make whole the unit employees for any losses suffered as a result of our unlawful conduct in accordance with the Remedy section.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the discipline issued pursuant to the May 20, 2004 policy and contract changes and within 3 days thereafter notify the employees in writing that this has been done and that the discipline will not be used against them in any way.

		AMERICAN CHURCH, INC. (Employer)	
Dated	Ву		
		(Representative)	(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1240 East 9th Street, Federal Building, Room 1695 Cleveland, Ohio 44199-2086 Hours: 8:15 a.m. to 4:45 p.m. 216-522-3716.

## THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 216-522-3723.